



POLICE DEPARTMENT

November 17, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Victoria
Tax Registry No. 939180
Brooklyn Court Section
Disciplinary Case No. 2013-10704

The above-named member of the Department appeared before the Court on December 5, 2014; and February 2, July 20-21 and August 11, 2015, charged with the following:

1. Said Police Officer Michael Victoria, while on-duty and assigned to the 62 Precinct, on or about March 15, 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did possess drug paraphernalia.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Michael Victoria, while on-duty and assigned to the 62 Precinct, on or about March 15, 2013, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer did attempt to possess anabolic steroids.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Pamela J. Naples, Esq., Department Advocate's Office. Respondent was represented by Ronald A. Gregg, Esq., Gregg & Associates.

Respondent pleaded Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

FACTS

On Saturday, March 16, 2013, several vials labeled as anabolic steroids, and drug paraphernalia such as needles, were found in a canvas lunch bag in the 62 Precinct stationhouse muster room. The dispute was whether the bag and the items therein belonged to Respondent.

Sergeant Suzanne Anselmo indicated that she was assigned on the morning in question as the desk officer at the 62 Precinct. Anselmo did not see anything unusual when she began her tour around 0650 hours and checked various areas of the commands around 0730. She recalled the date in question as it was the St. Patrick's Day Parade (because March 17th was a Sunday) and members from throughout Brooklyn South were meeting at the 62 Precinct to get transported there. They were congregating in the muster room. Roll call was occurring during this time as well (Tr. 93-97, 105-07, 126-27, 135-36).

After the group left, around 1000 hours, Anselmo performed another stationhouse security check of the muster room to make sure no one had left anything behind. She found a small black lunch bag holding the door open. She picked it up and took it back to the desk because the phone was ringing. She thought it belonged to someone on the parade trip and opened it. There was no identification within. She found a pill case containing about ten different pills. There were also cup shakers, ice packs, a fork, and a tint meter. When Anselmo opened the meter case, hoping to find the officer to whom it belonged, she found two vials and hypodermic needles. There were also ice packs there. Anselmo thought that maybe it was someone's diabetes medication, but she had other matters to deal with. No one else handled the bag (Tr. 82, 87, 97-101, 110-13, 117, 119, 123-25, 128).

Police Officer Yekaterina Sverdlina also was working at the 62 Precinct on March 16, 2013, from 1200 to 2035 hours. She was friends with Respondent. At 1142 hours, Respondent called Sverdlina on her cell phone and told her that he had worked the night before but left his lunch bag at the stationhouse. She thought maybe it was his usual blue lunch bag, but he mentioned that it was black. He said that his lunch was in there and thought it either was in the upstairs lounge or the desk area. He was on his regular days off and asked her to hold onto the bag until his next tour. Sverdlina thought that Respondent sounded "like he was in a hurry, a little urgent." Still, she also was hurrying to get to work and told him that she would call him back (Tr. 46-50, 72, 76, 85-86, 88, 110, 120-21).

Police Officer Ralph Cilento also was assigned to the 62 Precinct and was working a 4x12 tour on March 16, 2013. He was friends with Respondent. Around noon that day, Cilento received a call from Respondent. He asked Cilento to retrieve his black lunch bag from the muster room. Cilento was unfamiliar with what Respondent was talking about but told him that he would look for it. When Cilento arrived at work, he looked in the muster room but did not find the bag. He called Respondent back, and he told Cilento to check the lounge or the locker room. Cilento was unsuccessful (Tr. 176-80, 182).

Sverdlina arrived at work a little before 1200 hours and asked Anselmo if she had seen a black lunch bag. Anselmo showed Sverdlina the bag that she had found and asked if that was the one she meant. Sverdlina said yes and told Anselmo that it was Respondent's lunch bag. According to Anselmo, Sverdlina said that Respondent had called her approximately seven times about the bag. Anselmo informed her that there were needles in the bag, which she had found in the muster room. Sverdlina looked and saw the needles and glass bottles, which were in a black tint meter box, as well as pills and plastic storage containers (Tr. 50, 56-58, 60-61, 69, 73, 80-82, 87, 101, 115-17, 128-29).

At trial, Sverdlina identified the bag in the Department's Exhibit (DX) 1 photograph as the bag that she saw behind the desk. It had the same red "6" design, and she recognized the material, the handle bar, and the two side pockets. She recognized the pill container in DX 2 as being in the black bag, as well as having been in Respondent's other blue bag. Sverdlina also recognized DX 3a-d as showing the needles and vials. Anselmo identified DX 1 as the bag that had held the muster room door open, and DX 3a-d as the contents of the bag (Tr. 51-54, 56-60, 74-76, 103-04).

Sverdlina googled and called a friend of hers who was a pharmacist concerning the vial labeled trenbolone. The friend said that it was akin to testosterone, "like a hormone of a type" – i.e., an anabolic steroid (Tr. 58-59).

Anselmo also looked online for information about the vials and confirmed that it was an anabolic steroid. She contacted the duty captain and the integrity control officer. Sverdlina testified that Anselmo instructed her to voucher the items, and Sverdlina held onto them until the Internal Affairs Bureau investigators, including Sergeants Brian Denis and Anthony Bagarozza, arrived. They told her not to let the bag leave her sight, and she carried out that instruction. Anselmo did not receive a call from anyone who had been on the parade trip, or anyone else, inquiring about the bag. She denied, however, that she gave the items to Sverdlina to voucher, saying that they waited for the duty captain to arrive (Tr. 14, 16-17, 38, 62, 65-67, 77-78, 83-85, 101-02, 112, 114, 116-17, 132-33, 162-63).

From 1300 hours on, Sverdlina had about six missed calls from Respondent. In fact, he called her during her official Department interview, held that day around 1700 hours. The interview was being conducted by Denis and Bagarozza. Denis told Sverdlina to call him back and ask for a more detailed description of the bag. She did so and asked Respondent how big the bag was and what kind of stitching it had. She asked whether there was a red "6" on the bag. He

told her that it was his bag, and asked where she was because he was in the stationhouse.

Respondent was louder and sounded more worried and nervous. The investigators told Sverdlina to hang up. Her union delegate and the IAB investigators went to find Respondent (Tr. 15-16, 18-20, 63-65, 80, 89-90, 139-41).

Cilento also received several calls from Respondent starting around 1430 hours. Cilento's delegate instructed him not to answer, however, as the matter was under investigation (Tr. 181-83).

Denis escorted Respondent to the Medical Division to be tested for drugs. On the way there, Denis asserted, Respondent remarked that he was not going to pass the test, "there was no way he was going to pass the test." He also asked if he should resign. This might have been part of a conversation or Respondent simply might have been thinking out loud. Respondent seemed "concerned" and deep in thought. Denis told Respondent that he could not answer those questions, but Respondent should wait to speak to a delegate before making any decisions. Denis oversaw the collection of the samples for the test, the results of which came back negative for drugs (Tr. 20-22, 25-30, 35, 145, 155-59, 162-63, 280).

Bagarozza was in charge from IAB's end of the forensic testing of the bag and the items in it. He testified there was only one fingerprint recovered that was clear enough to be identified. This print, on a clear food container, belonged to [REDACTED] also assigned to the 62 Precinct. The two vials tested negative for a controlled substance (Tr. 143-45, 185-88, 190-91, 198-203, 247-53, 264-65 [testimony of Criminalists Thomas Carboy and Manishi Agarwal, and Detective Edward Sanabria]; Respondent's Exhibit [RX] A, Carboy's report; RX B & C, Agarwal's reports).

Bagarozza conducted an official Department interview of Mateo. Mateo stated that during his meal period on March 15, 2013, he partook of some chicken Respondent had brought from home. Mateo handled the food container and returned it to Respondent (Tr. 146).

Bagarozza also conducted an official interview of Respondent. Respondent was shown photographs of the bag and its contents. He first admitted that these belonged to him. He acknowledged and described each dietary supplement. But when Bagarozza told him about the presence of Mateo's fingerprint, Respondent's account "kind of skewed and changed." He said that it possibly resembled his bag but he could not be sure without seeing and touching the actual item (Tr. 147-51, 161).

Mateo testified at trial that he worked an overtime tour on March 15, 2013, from 0800 to 1635 hours, with Respondent as his partner. To Mateo's recollection this was the only time that they were partners. They did not have concurrent regular tours. Mateo recalled that they might have talked about personal training, but not about anything like steroids or supplements (Tr. 214-17, 228-31).

Mateo stated that on the date in question, he took his meal in the 62 Precinct lounge with Respondent around 1400 hours. Mateo was going to pick something up at a restaurant nearby, but Respondent offered him some extra chicken that he had brought from home. Respondent had to get his bag from a vehicle. He handed Mateo a plastic storage container and Mateo ate from it. He gave it back to Respondent afterward. Mateo never had seen the bag before. Mateo went home after meal, but believed that Respondent was working another tour and went to roll call. He took his bag with him (Tr. 217-19, 221-25, 228, 231, 233).

Mateo agreed that he identified the bag at his official Department interview. He identified DX 1 as a photograph of what was shown to him then. He testified at trial that it appeared to be the bag Respondent had on March 15, 2013 (Tr. 219-21, 224-25).

Respondent testified that he had been a police officer for over ten years. He was originally a pre-med student in college, but switched focus and at one time was a nutrition major. He had taken many chemistry and physiology courses. He was interested in health and wellness and worked out extensively. His three children and his job as a police officer were very important to him (Tr. 268-70).

Respondent was a competitive bodybuilder. The approximately ten competitions at which he performed from 2007 to 2012 were "strictly" drug-tested. There was also a polygraph portion of the test. He passed every time, although he conceded that he knew he was going to get tested the morning of any given competition. He also helped install gym equipment in various police facilities (Tr. 271-72, 274-75, 291-92, 299).

Respondent admitted that he used anabolic steroids while playing first-year college football for the University of Pittsburgh, over 15 years ago. He fully disclosed this during the application to become a police officer. Since that time he only trained "naturally." This included supplements, but other than Propecia for hair loss the ones he mentioned were protein additives and did not contain ingredients akin to testosterone (Tr. 275-76, 279-80, 291-92).

Respondent indicated that he worked a double shift on March 15, 2013, during both the second and third platoons. He agreed that he gave Mateo some chicken for meal. The next day, March 16th, was the first of three days off. When he "went to pack my meals for the day, as I regularly do," he realized he left his lunch bag at work. The bag, of the Six Pack brand, was black and had a "6" emblem on the front. It was a common bag that could be purchased at any health and fitness store, and had several compartments for food, pills and supplements. He took it everywhere and last saw it toward the end of his tour, around 2200 or 2300 hours. He believed he left it in the muster room when he signed out and went to the bathroom. He was tired and must have forgotten it. He called Cilento and Sverdlina and asked them to locate the bag.

Respondent spoke to Sverdlina, but then she stopped returning his calls (Tr. 269, 271-74, 283-84, 288, 291, 293, 296, 298-99, 301-03).

Respondent denied telling the investigators who drove him to the Medical Division to be tested for steroids that he wanted to resign. He did ask if he had the option of declining to take the test, and if he could speak to an attorney first. He wondered aloud if he made the right professional choice by becoming a police officer. But he never said that he thought he would fail the test (Tr. 287-88, 303-04).

During his official interview, the investigators showed Respondent a black-and-white photograph of a bag. He told them that it looked similar to his bag but he could not be sure because he was only looking at a photograph and the bag itself had left his custody. He recognized the items as being similar to items he owned, but agreed with counsel that there was nothing "that would lead you to believe that the bag that they photographed and showed you was your bag." He never used nor attempted to purchase trenbolone or testosterone propionate. He "would have to assume they were placed in there by another individual." Respondent admitted stating at his interview that he had not seen anyone else assigned to the 62 Precinct with a similar bag (Tr. 284-91, 294-97, 304-05).

FINDINGS AND ANALYSIS

The circumstantial evidence in this case overwhelmingly proved that Respondent possessed a lunch bag that contained two vials labeled trenbolone and testosterone propionate, both anabolic steroids, as well as drug paraphernalia like needles. Sergeant Suzanne Anselmo, the desk sergeant for the 62 Precinct on March 16, 2013, found what appeared to be a black lunch bag in the muster room. She kept it in her possession until she opened and found the vials and other items. The Court credits her assertion that the bag remained in her sight at all times

and that no one else touched it until she opened it. She displayed no bias against Respondent and gave a straightforward, unembellished account.

Respondent admitted that he had a similar black lunch bag and that he likely left it in the muster room when he signed out the previous day, March 15, 2013. He was tired from working a double tour and probably just forgot it there. Nevertheless, he claimed never to have seen the inculcating items before: the anabolic steroid vials and the needles.

Respondent's denial was not credible. He admitted that he used steroids in his youth and that he was a competitive bodybuilder. He was very familiar with gyms and the fitness industry. The Court does not credit his assertion that he tried steroids only once in order to play college-level football, and quit using them after that first year.

The lack of a positive drug test is not dispositive in this case, however, as it was the Department's assertion that although the vials were labelled as anabolic steroids, the substance in the vials was not actually an anabolic steroid. In other words, Respondent tried to buy steroids but got fooled by whatever vendor he was using, just as a street narcotics buyer being given baking soda (Tr. 9). This is the basis of the charge that Respondent attempted to possess steroids. The Department never asserted that evidence of steroids should have been found in his body.

The lack of a latent print belonging to Respondent also is not dispositive. Respondent admitted that he handled the same food container from which Mateo partook. In other words, it was undisputed that they both touched the container. The presence of Mateo's print and lack of Respondent's cannot therefore prove that Respondent did not touch the container. No one else's prints of value were found on any of the other items, so this too cannot prove that someone else touched the vials or needles, for example, but Respondent did not. As the fingerprint examiners explained, there are many factors that go into whether a latent print of value will be left.

Smooth, shiny, surfaces are best (Tr. 195, 257). It is not surprising that no latent prints of value were found on a soft canvas bag or on cylindrical vials with a diameter no wider than a human finger (see DX 1-3, photographs).

Respondent's reaction to the missing bag also is key to the Court's finding that he believed there were steroids inside. This was, he testified, a common bag available at any fitness store. Yet he acted with immense anxiety over it. He made frantic calls to two fellow police officers that he knew would be working that day, attempting to get them to find the bag. The Court credits Sverdlina and Cilento's account of these calls. Like Anselmo, Sverdlina and Cilento showed no bias toward Respondent and had nothing to gain by testifying against him. In fact, Cilento was his friend. Sverdlina said that Respondent sounded nervous during the calls. Respondent admitted at trial that he called her several times but she did not call back. If all that was in there was at most dietary supplements, there was no reason to be so insistent. In fact, according to Sverdlina, Respondent showed up at the command looking for the bag, something he testified he did not want to do because he lived on Staten Island and had no plans to go to Brooklyn that day (and pay the toll) (Tr. 273). This is not someone that was concerned over a mere lunch or gym bag. The anxiety in Respondent's voice, the repeated frantic calls, and the fact that he went into Brooklyn on his day off demonstrate that he was afraid someone would discover his bag.

The tribunal rejects Respondent's unvarnished speculation that someone planted the steroid vials in his bag. He identified no one that would have wanted to do this, and no reasons why someone would have wanted to do so. For these reasons, Respondent's argument about an allegedly broken chain of custody are meritless.

Respondent admitted asking the IAB investigators on the ride to the Medical Division about his options if he did not want to take the test, and that he was unsure he made the right career decision by becoming a police officer. As a whole these show consciousness of guilt.

In sum, the totality of the evidence demonstrated that Respondent attempted to possess anabolic steroids and drug paraphernalia like needles, in that he possessed a lunch bag containing needles, and vials that were represented as containing steroids, even though they actually did not. As such, Respondent is found Guilty.

PENALTY

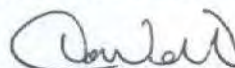
In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 14, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department made a recommendation of 20 days to be served on suspension, plus an additional 40 vacation days, and the placement on one year of dismissal probation. This is generous in light of the fact that Respondent attempted to possess anabolic steroids. The completed possession of steroids normally results in separation from the Department. See, e.g., Case No. 2013-9945 (Feb. 5, 2015); Case No. 2011-4578 (Sept. 4, 2012).

The Department's recommendation is consistent with precedent. See Case No. 2015-13017 (Sept. 2, 2015) (35 vacation days and one year dismissal probation for possessing drug paraphernalia and hypodermic needles in officer's Department locker); Case No. 67669/93, (June 30, 1995) (dismissal probation and forfeiture of pre-trial suspension time for referring an individual to an employee of officer's store for the purchase of steroids, and for associating with persons involved in criminal activities).

As such, the Court recommends that Respondent be *DISMISSED* from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code § 14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent be suspended for 30 days and that he forfeit an additional 30 vacation days, for a total of 60 penalty days.

Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

APPROVED

APR 18 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL VICTORIA
TAX REGISTRY NO. 939180
DISCIPLINARY CASE NO. 2013-10704

In 2013 and 2014, Respondent received an overall rating of 3.0 “Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2012. He has been awarded one medal for Excellent Police Duty. [REDACTED]

[REDACTED] He has been on Level II Discipline Monitoring since April 2014. He has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner – Trials